

AMENDED IN SENATE MAY 23, 2002

AMENDED IN SENATE MAY 14, 2002

AMENDED IN SENATE APRIL 30, 2002

SENATE BILL

No. 2000

Introduced by Senator Dunn

February 22, 2002

An act to add Title 3.6 (commencing with Section 1883) to Part 4 of Division 3 of the Civil Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 2000, as amended, Dunn. Electric power and natural gas: unlawful practices.

Existing law sets forth the obligations that arise from particular transactions.

This bill would prohibit any person engaged in the business of generating, selling, distributing, transferring, marketing, or trading electricity or natural gas from engaging in *or knowingly facilitating* specified ~~unlawful acts or practices~~ *conduct*. This bill would provide that a person found in violation of these provisions would be required to disgorge the profits from the unlawful conduct, and would be liable for, among other things, 3 times the amount of the disgorgement and attorney fees. The bill would require that actions for relief under these provisions be brought in a court of competent jurisdiction by the Attorney General or by another person, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Title 3.6 (commencing with Section 1883) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 3.6. UNLAWFUL ELECTRIC POWER AND
NATURAL GAS PRACTICES

1883. (a) For purposes of this ~~chapter~~ *title*, “person” means and includes a natural person, corporation, firm, partnership, joint stock company, association, or *any* other organization or entity of persons.

(b) A person engaged in the business of generating, selling, distributing, transferring, marketing, or trading electricity or ~~natural gas may not engage in any of the following unlawful acts or practices:~~ *natural gas may not engage in any conduct that results, or is intended to result, in a significant or sustained increase in the price of electricity or natural gas, or a significant or sustained decrease in electric or natural gas system reliability, including, but not limited to:*

(1) The physical withholding of electricity from ~~the generation, sale, distribution, transfer, marketing, or trading of electricity, resulting in increased electricity prices or the creation of a scarcity of supply in any electricity market.~~

(2) The economic withholding of electricity by submitting bids above the reasonable price for that electricity in a fair and ~~competitive market, resulting in any bid not being accepted so as to force an increase in electricity prices or create a scarcity of supply in any electricity market.~~ *competitive market.*

(3) The acquiring, using, or disseminating of electric system ~~reliability information in connection with the generation, sale, marketing, or trading of electricity, resulting in increased electricity prices by the manipulation of the generation, sale, distribution, transfer, marketing, or trading of electricity.~~ *reliability information.*

(4) The using or providing of false or misleading information ~~in connection with the generation, sale, distribution, transfer, marketing, or trading of electricity, resulting in increased electricity prices.~~

(5) The creating, prolonging, or using of shortages or outages to increase the price of electricity.

~~(6) The selling, distributing, transferring, marketing, or trading of electricity in any other state, resulting in a reduction of supply to increase the price of electricity.~~

~~(7).~~

(6) The refusing of any *lawful* dispatch order of any transmission system operator to generate electricity.

~~(8)~~

(7) The scheduling of electricity into the electricity transmission system with the intent or knowledge that the schedule will create congestion or the false impression of congestion in that system.

~~(9) The overscheduling of electricity generation into the electricity transmission system with the intent or knowledge that the actual load will be lower and result in congestion counterflow payment, or the schedule will result in compensation to reduce congestion.~~

~~(10) system, or result in congestion counterflow payment, or compensation to reduce congestion.~~

(8) The selling, distributing, transferring, marketing, or trading of electricity to any person in any other control area with the intent or knowledge that a similar amount of electricity will be repurchased in the original control area for the purpose of avoiding applicable market rules.

~~(11)~~

(9) The intentional or knowing withholding of electricity from any market subject to a price cap with the intent to sell, distribute, transfer, market, or trade the electricity to a market not subject to a price cap.

~~(12)~~

(10) The misrepresentation of the availability *or supply* of electricity or natural gas.

~~(13) The misrepresentation of the supply of electricity or natural gas.~~

~~(14)~~

(11) The misrepresentation of the reason or reasons for electricity generating facility closures, outages, or maintenance.

~~(15)~~

1 (12) The selling, distributing, transferring, marketing, or
2 trading of electricity or natural gas between subsidiaries of the
3 ~~same company, resulting in increased electricity or natural gas~~
4 ~~prices.~~

5 ~~(16) same company.~~

6 (13) The creation of an artificial increase in demand for natural
7 gas, or refusal to sell natural gas, in order to raise the market price
8 or cause any of the prohibited ~~acts or practices~~ *conduct* set forth
9 in this subdivision.

10 ~~(17) The engaging in strategies, acts, or conduct in the sale,~~
11 ~~distribution, transfer, marketing, or trading of electricity or natural~~
12 ~~gas, that results in prices above the reasonable price for that~~
13 ~~electricity or natural gas in a fair and competitive market.~~

14 (c) *A person shall not knowingly facilitate conduct prohibited*
15 *by subdivision (b).*

16 1883.1. A person who violates Section 1883 shall, in addition
17 to other damages, be required to disgorge the profits of that
18 unlawful conduct. As used in this section, “disgorgement” shall
19 be measured by the difference in the actual price charged for the
20 electricity or natural gas in the course of the unlawful conduct and
21 the reasonable price for that electricity or natural gas in a fair and
22 competitive market. In addition, a person found to be in violation
23 of Section 1883 shall be liable for three times the amount of
24 damages sustained, as measured by the amount of disgorgement,
25 because of the act or acts of that person. A person found to be in
26 violation of Section 1883 shall also be liable for the costs of a civil
27 action brought to recover those damages and attorney fees.

28 1883.2. (a) Specific or preventive relief may be granted to
29 enforce a penalty, forfeiture, or penal law in any case of a violation
30 of Section 1883.

31 (b) A person who engages, has engaged, or proposes to engage
32 in any of the conduct set forth in Section 1883, may be enjoined
33 in any court of competent jurisdiction. The court may make these
34 orders or judgments, including the appointment of a receiver, as
35 may be necessary to prevent the use or employment by a person of
36 a practice or conduct set forth in Section 1883, or as may be
37 necessary to restore to a person in interest money or property. The
38 court shall order the disgorgement of the revenue from the use or
39 employment of any act or practice prohibited by Section 1883, and
40 shall establish a fluid recovery fund for the return of the funds.

1 1883.3. Actions for relief pursuant to this chapter shall be
2 prosecuted exclusively in a court of competent jurisdiction by the
3 Attorney General, or by a person acting for the interests of itself,
4 its members, or the general public.

5 1883.4. Unless otherwise expressly provided, the remedies or
6 penalties provided by this section are cumulative to each other and
7 to the remedies or penalties available under all other laws of this
8 state.

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